DIVISION BENCH: HON'BLE SHRI V.K.SHRIVASTAVA
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1619 of 1999

Appellant : Konheram S/o Jhepda @ Dukhna Uraon
Aged 38 years, R/o Mahua Toli Korandha
Thana & Tehsil – Kusumi, Distt- Sarguja

Vs.

Respondent : State of Madhya Pradesh
Thana In-Charge – Kusumi, Distt- Sarguja

Shri Abhay Tiwari, learned counsel for the appellant.

Shri M.P.S. Bhatia learned P.L. for the respondent/State.

JUDGMENT
(29.03.2006)

Per Dhirendra Mishra, J

1. The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment of conviction and order of sentence dated 31.03.1999 passed by the Sessions Judge, Sarguja (Ambikapur) in Sessions Trial No. 251/98 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.

2. Prosecution case in brief is that deceased Ruchnibai was wife of the appellant and she had become disabled about 10-12 years back and used to walk by hand and because of this disability the accused was neglecting and torturing her. On 29.05.1998 the accused claimed that Jesus Christ had come in his dream and asked him to cure his wife by practicing witchcraft. Thereafter, he made his wife lie on the bed and started treating her by way of witchcraft in the presence of his son and other villagers. In the process, he asked the persons present there to

close their eyes. In the meanwhile, the persons present there heard the shouts of wife of the appellant and thereupon son of the accused and others saw the appellant assaulting the deceased over her chest with back side of the pick-axe. Seeing this act of the appellant his son Sandeep (PW-1) and other villagers namely Premsai (PW-2), Subhash (PW-4) and Tribhuwan (PW-7) fled away from there. The accused had covered his wife with the clothes who was subsequently found dead. PW-6 Lalluram – the village Sarpanch lodged the report Ex.P/8 mentioning the aforesaid facts.

3. After registering the offence the police proceeded for investigation. During investigation dead body of Ruchnibai was sent for post mortem examination to Primary Health Centre, Kusmi vide Ex.P/10 where Dr. T.Sai (PW-8) conducted the post mortem examination and submitted the post mortem report Ex.P/11. The doctor opined that cause of death was syncope, internal hemorrhage, rupture of spleen and liver and according to him mode of death was homicidal in nature. The clothing of the deceased sent by the doctor after post mortem were seized vide seizure memo Ex.P/5. The accused was arrested vide arrest memo of Ex.P/6. After completing the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Court of Sessions Judge, Sarguja (Ambikapur) for trial.

4. Learned Sessions Judge framed charge against the accused under Section 302 of the IPC. Accused abjured his guilt. Prosecution in order to establish its case examined as many as eight witnesses. Thereafter, statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case.

5. After hearing learned counsel for the respective parties, learned Sessions Judge convicted and sentenced the appellant as mentioned above.

6. Homicidal death of deceased Ruchnibai is not in dispute. Even otherwise from perusal of the post mortem report Ex.P/11 which is duly proved by Dr. T. Sai (PW-8) in which he found the following injuries over the body of the deceased, the homicidal death of deceased Ruchnibai is established:-

(1) <u>On external examination</u>:-

(a) bruise of left parietal region of the scalp, 7 x 4 cm, irregular blue brown in colour;

(b) Bruise on right arm 5 x 3 cm, irregular in shape, blue brown in colour;

(c) Bruise on right forearm 4 x 3 cm, irregular brown in colour;

(d) Bruise on left arm 4 x 3 cm, irregular brown in colour;

(e) Bruise of left forearm 3 x 2 cm, irregular brown in colour;'

(f) Bruise on right chest 6 x 4 cm, irregular brown in colour;

(g) Bruise on left chest 7 x 5 cm, irregular brown in colour;

(h) Lacerated wound on right thigh 5 x 4 cm, irregular brown in colour;

(i) Bruise on right leg 6 x 3 cm, irregular brown in colour;

(j) Bruise on left thigh 4 x 3 cm, irregular brown in colour;

(k) Lacerated injury in anterior aspect of left sole 5 x 4 cm, irregular in shape, brown in colour;

Above injuries could be caused by hard and blunt object.

(2) <u>On internal examination</u> following injuries were found;

(a) fracture of 5^{th} to 9^{th} right ribs;

(b) fracture of 4^{th} to 10^{th} left ribs;

(c) right and left both lungs congested;

(d) liver, spleen ruptured;

(e) fracture of both right and humorous bone, both right and left ulna and radius bones, both right and left femur, right tibia and fibula seen;

All the above injuries were ante mortem in nature.

7. The next question for consideration of this appeal is whether prosecution has been able to establish involvement of the accused/appellant in the crime question? From perusal of statement of PW-1 Sandhi, PW-3 Pradeep Kumar, PW-4 Subhash and PW-7 Tribuwan Ram who are the alleged eyewitnesses to the incident have not supported the case of the prosecution and turned hostile. None of the witnesses has stated that on the date of incident the appellant was assaulting the deceased from the back side of the pick-axe in the name of treating her for the disability by way of witchcraft.

8. Learned trial Court in paragraph -15 of its judgment has held that on 29.05.1998 Ruchnibai died homicidal death and at that time accused was present in the house with his wife, therefore, since the appellant was with his wife till the last moment and thereafter the dead body with multiple injuries was found from the house of the accused which is not duly explained by the accused, an inference has been drawn that the appellant killed his disabled wife in the name of treating her, out of frustration.

9. From the perusal of material available on record it is clear that when the appellant was treating his wife number of villagers including son of the appellant were present in his house but no one deposed that the appellant assaulted his wife and killed and as such we are unable to accept the reasoning given by the trial Court to reach the conclusion that only on the basis of circumstance that the appellant was residing with his wife in his house at the time of incident, he was responsible for causing death of the deceased. Though from the evidence available on record

strong suspicion arises against the appellant that he might have caused the death of his wife but it is settled law that suspicion howsoever strong, cannot take the place of proof.

10. In the aforesaid circumstances, we are of the considered view that from the evidence available on record the prosecution has failed to establish involvement of the appellant in commission of the offence in question and the trial Court was not justified by convicting and sentencing the appellant as mentioned above.

11. In the result, the appeal succeeds. The impugned judgment of conviction and sentence is set aside. The appellant is acquitted of the charge under Section 302 of the IPC. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
V.K. Shrivatava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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